ever, made this extension on facts exactly similar to those of the principal case. *Applegate* v. *Travelers' Ins. Co.*, 153 Mo. App. 63, 132 S. W. 2. But the court in the principal case seems to have reached a more desirable result in refusing to follow this decision.

INTERSTATE COMMERCE — JURISDICTION OF COMMISSION — COMMON CARRIER. — A corporation was chartered for the purpose of doing an interstate freight business between ports connected by no existing steamship line. The stock was subscribed to conditionally upon the declaration by the Interstate Commerce Commission of rates favorable to the enterprise. Before it had acquired any boats or terminal facilities the company brought its complaint under the Panama Canal Act of 1912, amending the Act to Regulate Commerce, and asked that the Commission require the railroads named as defendants to establish and maintain proportional freight rates, that is, rail rates applicable to through rail and water shipments lower than the local rail rates to the port of loading on vessels. *Held*, that the complaint be dismissed. *Charleston & Norfolk S. S. Co.* v. *Chesapeake & Ohio Ry. Co.*, 40 Int. Com. Rep. 383.

A hardship has apparently resulted to a corporation which seeks in good faith to learn under what rates it will be allowed to do business before spending further funds in an enterprise the success of which depends upon those rates. But the decision that the complainant is not a "common carrier engaged in," etc. and therefore not within the Commission's jurisdiction seems to be a correct interpretation of the terms of the Act to Regulate Commerce. 24 STAT. AT LARGE, 379. The amendment in question does not increase the agencies over which the Commission shall have jurisdiction. It only confers special powers relative to through rail and water carriage. 37 STAT. AT LARGE, 568. And yet the tenor of the Commission's opinion is noticeably different from that of at least two earlier decisions not under this amendment. *Flour City S. S. Co.* v. *Lehigh Valley R. Co.*, 24 Int. Com. Rep. 179; *Suffern Grain Co.* v. *Illinois Central R. Co.*, 22 Int. Com. Rep. 178. In public service regulation by the states the same difficulty in terms exists. Since 1910 several legislatures have included specifically within the jurisdiction of the commissions established corporations organized for public service but as yet transacting no business and acquiring no property. 8 BIRDSEYE, 2153 (1910 N. Y.); PAGE & ADAMS ANN. GEN. CODE, § 614–2*a* (1911 Ohio); 1911 NEW JERSEY LAWS, c. 195, § 15; DIST. COL. APPROPRIATION ACT OF MARCH 4, 1913, § 8, par. 1.

JUDGMENTS — COLLATERAL ATTACK — MISTAKE CONCERNING DEATH OF LEGATEE AS GROUND FOR ATTACK ON PROBATE DECREE. — A testator left a fund in trust to his widow for life, then equal shares to be given to each of his children "or their heirs." After the life estate the trustees under order of court deposited in a bank the share of the plaintiff legatee, one of the children. Later the court, erroneously believing the plaintiff legatee to be dead, decreed that the bank pay the fund to his heirs. Payment was made. The plaintiff now seeks to have the decree vacated and an order made against the bank. *Held*, that although the decree will be vacated, no liability will be imposed on the bank. *Jones* v. *Jones*, 223 Mass. 540.

Since the death of the testator is necessary to confer jurisdiction on the probate court a grant of probate of the estate of a living person is void, and the decree can afford no protection to one acting under it. *Scott* v. *McNeal*, 154 U. S. 34; *Jochumsen* v. *Suffolk Savings Bank*, 3 Allen (Mass.) 87. See 1 WOERNER, AMERICAN LAW OF ADMINISTRATION, § 208; 10 HARV. L. REV. 62. In the principal case, however, the probate court was administering a fund over which it had jurisdiction through the death of the plaintiff's testator. By the terms of the will, at the death of the life tenant the share in question was to go to the plaintiff or his heirs; and the court's mistake of fact as to the

death of the plaintiff was merely a mistake as to the person entitled to the fund. This raises no question of jurisdiction. It is the duty of a court of probate to decide who on the facts are the proper distributees. See *Loring* v. *Steineman*, 1 Metc. (Mass.) 204, 209. A decree of payment or distribution made by a probate court which has jurisdiction will protect an executor or administrator if he makes payment in good faith in accordance therewith. *Ernst* v. *Freeman*, 129 Mich. 271, 88 N. W. 636; *Lowry* v. *McMillan*, 35 Miss. 147. This protection is accorded him, even if the decree be subsequently reversed. *Cleaveland* v. *Draper*, 194 Mass. 118, 80 N. E. 227; *Charlton's Appeal*, 88 Pa. St. 476; *Johnson* v. *Clem*, 5 Ky. L. R. 793. The reason is that the court protects those who in accordance with a legal duty act in obedience to a valid decree. The bank in the principal case has a statutory duty to pay according to the decree of the probate court. MASS. REV. LAWS, c. 150, § 23. Accordingly, it should be protected in making the payment.

LIENS — ATTORNEY — LIEN ON DOCUMENT ENFORCED OUT OF FUND REALIZED THEREBY. — A solicitor held, under his general lien, papers of a company which had been his client. During proceedings to wind up the company, the solicitor, pursuant to an order expressly reserving his lien, surrendered into court a document reciting an agreement to lease mining rights to the client. The liquidator contracted to sell the mining rights. Upon the purchaser's default, a sum of money deposited with the liquidator became forfeited. The latter applies for an order allowing him to retain the fund. The solicitor claims priority for his lien. *Held*, that the fund is to be applied first to the satisfaction of the solicitor's lien. *In re The Ardtully Copper Mines, Ltd.*, 50 Ir. L. T. R. 95.

Voluntary surrender to the bailor ordinarily dissolves a lien. *Vinal* v. *Spofford*, 139 Mass. 126, 29 N. E. 288. Therefore where an attorney has acquired a lien on papers prior to winding-up proceedings, an order for surrender to the liquidator will not be sustained. *In re Rapid Transit Co.*, [1909] 1 Ch. 96. *Cf. In re Wilson*, 12 Fed. 235, 244. But if the delivery is for a temporary purpose only, with the lien reserved, it is not dissolved. *De Witt* v. *Prescott*, 51 Mich. 298, 16 N. W. 656. *Cf. Blunden* v. *Desart*, 2 Dr. & War. 405, 419. *Contra*, *McFarland* v. *Wheeler*, 26 Wend. (N. Y.) 467. *Cf. Gregory* v. *Morris*, 96 U. S. 619. Especially must this be so in the principal case, for the court ought surely to keep faith with its own order. *Cf. Greenfield* v. *Mayor*, 28 Hun (N. Y.) 320. The documents in the main case were of assistance in obtaining the forfeiture. It would therefore seem that the lien preserved on the document in court should be extended to the forfeiture money. *Cf. Boynton* v. *Braley*, 54 Vt. 92, 93, with *Blunden* v. *Desart*, 2 Dr. & War. 405, 424. For offspring and accessions to chattels are subject to the same bailee's and pledgee's rights as the chattels. See *Kellogg* v. *Lovely*, 46 Mich. 131, 133, 8 N. W. 699, 700. *Cf. Putnam* v. *Cushing*, 10 Gray (Mass.) 334. See 2 KENT, COMMENTARIES, 14 ed., 361. *Cf. Cory* v. *Harte*, 13 Daly (N. Y.) 147. Again, money collected by an attorney's efforts is subject to his charging lien. *In re Wilson*, 12 Fed. 235, 238. And courts have held, apparently on this analogy, that money realized by the delivery of essential papers might be subjected to the same lien. *Aycinena* v. *Peries*, 6 Watts & S. (Pa.) 243. See *In re Wilson*, 12 Fed. 235, 244. An objection to the application of such analogy is the fact that a charging lien is specific rather than general.

NATIONAL GUARD — THE STATUS OF THE STATE MILITIA UNDER THE HAY BILL. — The appellee, Emerson, a member of the Massachusetts militia, was called into the service of the United States to aid in repelling the incursions of Mexican bandits. He refused to take the oath required by the recent Hay Bill, and claimed to be discharged of all federal obligations, on the theory that so much of the Dick Act, under which he had enlisted, as provided for